IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 24506 of 2007(P)

OS.521/2004 of I ADDL.SUB COURT,ERNAKULAM

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PETITIONERS:

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1. **VINOD BABU C,39/4158,KARIMPATTA ROAD, COCHIN-16.**

2. **BABY JOSEPH,6C,SYRIAKANTHI APARTMENTS, IYYATTUMUKKU,COCHIN-11.**

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS:

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1. **M/S.FOUR SQUARE ESTAE PRIVATE LTD, 9D,KATTIKKARAN TOWERS,COCHIN-18, REP.BY ITS DIRECTOR K.M.MATHAI.**

2. **K.M.MATHAI,36/906,ST.VINCENT CROSS ROAD, COCHIN-18.**

3. **GRACY THOMAS,SURESH BHAVAN,CHOWPATH C-5,MUMBAI-26.**

4. **THARIAN JOSEPH,S/O.K.P.PAPPAN,27/1210, KANNARKKAT HOUSE,PANAMPILLY NAGAR,PERUMANOOR DESOM,ERNAKULAM.**

5. **JERAM PROPERTIES (INDIA) PVT.LTD, DOOR NO.CC 39/3103,IST FLOOR,PDR BHAVAN, PALLIYIL LANE,FORESHORE ROAD,COCHIN,REP.BY ITS DIRECTOR K.P.VENU.**

6. **SURESH THOMAS,S/O.LATE T.MATHEW, PANAMTHOTTATHIL HOUSE.**

7. **SUJA GEORGE,SURESH BHAVAN,CHEWPATTI, SEA FACE,MUMBAI- 400026.**

8. **N.RAMALINGA RAVIKUMAR,I/C,NANDITHA APARTMENTS,NO.47,THIRUMALAI PILLAI ROAD, T.NAGAR,CHENNAI 600 017.**

9. **STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR,ERNAKULAM.**

BY GOVERNMENT PLEADER SMT. R. BINDU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No. 24506 OF 2007

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Dated this the 13th day of August 2007

JUDGMENT

This writ petition is preferred against the order of the Sub Judge, Ernakulam against the finding on issue No.4 regarding court fee in O.S.No.521/2004. The suit is one for a declaration that Sale Deed No.101 of 2004 of the Sub Registry, Ernakulam, executed on 6.1.2004 by defendants 1 and 2 in favour of the 4th defendant is not binding on the plaintiff company that the said sale deed is inoperative, fraudulent, null and void. There is also a prayer for recovery of possession of plaint schedule property items 1 to 10 from the 4th defendant. If prayer No.1 is allowed, naturally the 4th prayer also follows the suit. So the main relief claimed for is regarding the declaration of the document to be null and void. Unfortunately the plaintiffs have not chosen to state exactly under which provision they have filed the suit. I presume that it must be under Section 25(a) of the Court Fees Act because there is no prayer for consequential injunction. If a suit is filed under Section 25(a) then the court fee has to be paid as contemplated under Section 7 of the Court Fees Act. What has

happened in this case is that the plaintiffs have shown the market value in the document and have challenged it. Since it is not a suit for setting aside the document under Section 40 of the Court Fees Act and the suit is filed under Section 25(a) of the said Act, the method to be adopted is as contemplated under Section 7 of the Court Fees Act. Even if the prayer is under Section 40, the market value of the property has to be shown as on the date of suit and not on the market value shown in the document. The plaintiffs have only chosen to file the suit under Section 25(a) of the Court Fees Act. The learned Sub Judge had not adverted to these factors and had only accepted the contention of the plaintiffs and found that the court fee paid is correct. I find that is not in accordance with law.

2. Therefore the order under challenge is liable to be interfered with and it is set aside. The court below is directed to reconsider the court fee question afresh in the light of Section 25(a) and Section 7 of the Court Fees Act and direct the plaintiffs to pay the court fee and in case of necessity to amend the plaint in accordance with law. Needless to say that this has to be done before the commencement of the trial by the court below.

3.So far as the challenge against Ext.P5 is concerned, after amendment of the C.P.C., unless it is a pure question of law it need not be tried as a preliminary issue. Whether a person is competent to sign is a

matter which may on certain occasions be a mixed question of fact and law. This court cannot, therefore, compel the Munsiff to consider it as a preliminary issue. Therefore I am not inclined to interfere with Ext.P5 order as it relates to preliminary issue.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

cdp/-